

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: ASBESTOS PRODUCTS  
LIABILITY LITIGATION (No. VI)

MDL DOCKET No. MDL 875

THIS DOCUMENT RELATES TO:  
Cases listed on the attached  
Exhibit "A"

**MOTION AND MEMORANDUM TO RECONSIDER THE COURT'S  
GRANTING DEFENDANTS LEAVE TO FILE A REPLY BRIEF  
CONCERNING AO 12 SUBMISSIONS**

NOW COME plaintiffs, by their attorney, Michael P. Cascino of Cascino Vaughan Law Offices, and submit this Motion to Reconsider the Court's Granting Defendants Leave to File a Reply Brief Concerning AO 12 Submissions. Plaintiffs move as follows.

1. On January 5, 2012 certain defendants asked for leave to file a reply brief. (See Exhibit "B").
2. Under local rules, plaintiffs should have 14 days to respond.
3. The Court granted defendants relief on January 6, 2012, without giving plaintiffs an opportunity to file a response. (See Exhibit "C").
4. Certain defendants original motion argued that MDL AO 12 filings were not made in these cases. Certain defendants claimed they did not locate these AO 12 submissions in the IKON depository.

5. With regard to the defendants' motion stating that there were not AO 12 filings done for these cases, plaintiffs filed a timely response to defendants' original motions. Plaintiffs provided proofs of filing and service in the vast majority of these cases. In fact, the vast majority were in the IKON depository. (See Exhibit "D"). This is an example of certain defendants causing vexation of costs by not exercising due diligence and causing plaintiffs to respond to a motion that is based on false statements.<sup>1</sup> Certain defendants could have obtained the AO 12 filings from the IKON depository, or asked CVLO to produce these AO 12 documents before their pleadings were due, but chose not to do this.
6. In the reply brief this Court permitted the defendants to file, the defendants are now making new arguments in their reply brief concerning these previously submitted AO 12 submissions.
7. Defendants are being given another bite of the apple. Any specific discrepancies should have been filed within the prior time limits for AO 12 in these cases.

Specifically, defendants were previously ordered to make AO 12 submissions by January 31, 2009 pursuant to an order dated December 18, 2008. They did not.

8. In addition, as to the cases from Indiana, the defendants are getting a third bite of the apple. Specifically, Judge Reed had given the defendants a due date of November 12, 2009 to file objections. No objections were filed.<sup>2</sup>

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<sup>1</sup>Similarly, in the past these same certain defendants have claimed that they did not get AO 12 documents when, in fact, they had been served on defendants and could also be found at the IKON depository.

<sup>2</sup>These Indiana cases are Brisevac, Michael: 08-cv-91236; Gunn, Charles: 08-cv-91371; Johnson, James: 09-cv-91456; Jones, Joe: 09-cv-92262; Lucas, Teola: 10-cv-67426; Rorar, Theodore: 08-cv-91155; and Sobierajski, Thomas: 10-cv-68054.

9. Now, via a reply brief filed after this second AO 12 due date, defendants argue brand new allegations.

It is fundamentally wrong to allow another extension of time (via a reply brief) to allow defendants to make these new allegations.

10. This Court previously denied a plaintiff leave to file a reply brief, and denied plaintiffs' motion to vacate a dismissal without granting plaintiffs' motion to file a reply, and the Court did not address the matters raised in plaintiffs' reply. (See Exhibit "E"). Similarly, the Court should deny defendants' motion for leave to file a reply.

WHEREFORE, plaintiffs pray this honorable Court grant plaintiffs' Motion to Reconsider Granting Defendants Leave to File a Reply Brief Concerning AO 12 Submissions and deny defendants arguing anything concerning AO 12 submissions except whether they were done or not done. In the alternative, plaintiffs request 14 days to file a sur reply.

Dated: January 13, 2012

Respectfully submitted,



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